IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

RCRev..No. 21 of 2007

AGAINST THE ORDER DATED 25/02/2006 IN RCA. 35 /2003
of THE RENT CONTROL APPELLATE AUTHORITY
(ADDL.DISTRICT COURT (ADHOC)-III)), THALASSERY
RCP.138/1998 of THE RENT CONTROLLER/MUNSIFF COURT, THALASSERY

REVISION PETITIONERS/RESPONDENTS/PETITIONERS

1. JANAKI W/O. NARAYANAN,
MADATHIL PARAMBA HOUSE, NANGARATH PEEDIKA P.O.,
TEMPLE GATE, THALASSERY.

2. BINDU W/O.RJEEVAN, MARTHILERI HOUSE,
NANGARATH PEEDIKA P.O., TEMPLE GATE,
THALASSERY.

3. BEENA D/O.NARAYANAN, MADATHIL PARAMBA
HOUSE, NANGARATH PEEDIKA P.O., TEMPLE GATE,
THALASSERRY.

4. BEESHMA D/O.NARAYANAN, MADATHIL PARAMBA
HOUSE NANGARATH PEEDIKA, P.O., TEMPLE GATE,
THALASSERRY.

5. BINAL KUMAR S/O.NARAYANAN, MADATHIL
PARAMBA HOUSE, NANGARATH PEEDIKA P.O.,
TEMPLE GATE, THALASSERRY.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENTS: APPELLANT- RESPONDENT

C.M.MADHUSUDHANAN S/O.T.M.APPUKUTTY NAIR
KOOLOTH VALAPPIL HOUSE, THIRUVANGAD AMSOM AND
DESOM P.O., TEMPLE GATE, THALASSERRY-2.

BY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 23/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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R.C.R.NO. 21 OF 2007

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Dated this the 23rd day of January 2007

ORDER

Udayabhanu,J.

The revision petitioners are the legal representatives of the deceased tenant who are under orders of eviction on the application filed under Section 11(3) of the Kerala Buildings (Lease & Rent Control)Act,1965 [Act 2 of 1965]{for short 'the Act'}vide the order of the Appellate Authority and reversing the finding of the Rent Control Court. The landlord had sought for eviction of three adjacent rooms used as dwelling units, out of which one of the tenants surrendered vacant possession on request. Another tenant against whom R.C.P.No.134/1998 was filed also surrendered vacant possession subsequent to the decision of the Rent Control Appellate Authority. The petitioners are the legal representatives of the other remaining tenant who died during the pendency of the proceedings. The bona fide need set up is for the residence of the brother of the respondent/landlord, who is residing in the tharwad house with his family. It is the case of the respondent/landlord that the brother of

the petitioner (PW2) is faced with lot of difficulties in continuing the residence in the tharwad house wherein he has no proprietary right. The idea is to convert the three rooms into a single unit to suit the residence of PW2 and his family. The revision petitioners are in occupation of the premises since 1982 originally on a rental of Rs.30/-. According to the petitioner in the R.C.P., the rent was enhanced to Rs.60/- per month since 1985 which was disputed by the tenant.

2. The evidence adduced consisted of the testimony of PW1, petitioner and PW2, brother of the petitioner for whose residence the premises is sought. PW3, the tenant, who surrendered vacant possession has supported the version of Pws.1 and 2. On a consideration of the findings of the appellate authority, we find that there is hardly any scope for interference as the right of the landlord/petitioner to seek eviction for the purposes of his brother, who is depending on him and who has no other separate accommodation of his own in his possession cannot be said to be not a bona fide need. There is no case that PW2 or PW1 are having in their possession any other buildings of their own. The premises being used as residence, the second proviso to Section 11(3) of the Act will not be applicable. In the circumstances, we find that the finding of the appellate authority is not liable to be interfered with.

3. Considering the plea of the counsel for the revision petitioners that the revision petitioners are the widow and children who hail from the poor strata of the society (according to the counsel), the revision petitioners are granted six months time from today onwards to surrender vacant possession on condition that the revision petitioners/tenants shall pay the entire arrears of rent, if any, and also to continue to remit the rent due in future and file an affidavit before the execution court within 20 days form today undertaking that the revision petitioner shall vacate the premises on or before 23-7-2007.

The Rent Control revision is dismissed accordingly at the admission stage.

Sd/-

K.A.ABDUL GAFOOR
JUDGE

Sd/-
K.R.UDAYABHANU,
JUDGE

ks. **TRUE COPY**

P.S.TO JUDGE